



FR-4915-01-P

## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36023]

Seneca County Industrial Development Agency—Lease Exemption—Finger Lakes Railway Corp.

Seneca County Industrial Development Agency (Agency), a noncarrier, has filed a verified notice under 49 CFR 1150.31 to lease from Finger Lakes Railway Corp. (FGLK), a Class III rail carrier, approximately 26.44 miles of railroad located in New York as follows: (1) Auburn Secondary, between milepost 37.56 at the Seneca/Cayuga County line and milepost 50.50 at or near Geneva, a distance of 12.94 miles; and (2) Geneva Running Track, between milepost 342.80 at the Ontario/Seneca County line and milepost 329.30 at or near Kendaia, a distance of 13.50 miles.<sup>1</sup>

According to the Agency, the lease of the rail lines is part of a series of proposed transactions that will allow FGLK to continue to pay a negotiated “payment in lieu of taxes” (PILOT) while maintaining the benefits of being exempt from local and state taxes. The Agency states that FGLK originally acquired the rail lines in 1995 and transferred title to the Agency and then leased back the rail lines for purposes of the PILOT arrangement. The Agency states that to extend and restructure the PILOT

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<sup>1</sup> The Agency and FGLK jointly filed one notice for three related transactions under 49 CFR 1150.31 and 1150.41, one in this docket, one in Docket No. FD 36022, and one in Docket No. FD 36024, as described further below. A separate notice will be published for each exemption.

arrangement, it will first transfer title to the rail lines to FGLK.<sup>2</sup> Then the Agency will lease the rail lines from FGLK—the transaction at issue in this docket. Lastly, FGLK will sublease the rail lines back from the Agency to continue operations, including all common carrier service and maintenance of the tracks.<sup>3</sup>

The Agency states that it will not hold itself out to provide any rail service, and is not acquiring any of the common carrier obligations with respect to the rail lines.<sup>4</sup> Under the terms of the lease from FGLK to the Agency and the amended and restated lease from the Agency to FGLK, the Agency maintains that FGLK will continue to be the sole provider of railroad services and will have the rights necessary to operate the railroad services. The Agency states that it is not leasing or acquiring any of the common carrier obligations with respect to the rail lines. The Agency further states that it will be precluded from interfering materially with FGLK's common carrier obligation.

The Agency certifies that it will not operate over the rail lines and that the transaction will not result in the creation of a Class I or Class II carrier. The Agency further states that FGLK is a Class III carrier.

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<sup>2</sup> FGLK filed a verified notice of exemption to acquire the rail lines in Finger Lakes Railway—Acquisition & Operation Exemption—Seneca County Industrial Development Agency, Docket No. FD 36022.

<sup>3</sup> FGLK filed a verified notice of exemption to sublease the rail lines in Finger Lakes Railway—Sublease & Operation Exemption—Seneca County Industrial Development Agency, Docket No. FD 36024.

<sup>4</sup> A motion to dismiss the notice of exemption on grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

The Agency states that the parties intend to consummate the transaction no sooner than May 13, 2016, the effective date of the exemption (30 days after the verified notice was filed), and only after the Board has ruled on the motion to dismiss.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than May 6, 2016 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36023, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Clark Hill PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

According to the Agency, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

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“[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: April 26, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

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